REMARKS

The Examiner has notified Applicant that claims 1 - 231 are subject to restriction and/or election requirement pursuant to 35 USC 121. The Examiner finds seven distinct inventions represented by groupings of the proposed claims submitted. According to the groupings found by the Examiner the 231 claims represent seven inventions as follows:

Invention I comprises independent claim 1 and claims 2 - 28 depending from it;

Invention II comprises independent claim 29 and claims 30 - 54 depending from it, independent claim 140 with claims 141 - 161 depending from it, independent claim 162 with claims 163 - 166 depending from it, independent claim 167 with claims 168 - 183 depending from it, and independent claim 198 with claims 199 - 202 depending from it;

Invention III comprises independent claim 55 with claims 56 - 74 depending from it;

Invention IV comprises independent claim 75 with claims 76 - 106 depending from it;

Invention V comprises independent claim 184 with claims 185 -

197 depending from it;

Invention VI comprises independent claim 204 with claims 205 - 227 depending from it; and

Invention VII comprises independent claim 228 with claims 229 - 231 depending from it.

In summary, the application comprises a total of 13 independent claims. Eleven independent claims (1,29 55,75,107,140, 162, 167,184, 198, and 203) are drawn to methods to produce or manufacture a multiphase composite. Two independent claims, 204 and 228 are drawn to composites produced according to the methods described in the other claims.

Applicant's Traverse of Examiner's Requirement to Elect Claims

Statutory Considerations

Restriction may be required if "two or more independent and distinct inventions" are claimed in one application. MPEP 802.01. An application may properly be restricted to one of two or more claimed inventions only if they are able to support separate patents and they are either independent or distinct. MPEP 803. Examiners must provide reason and/or examples to support the conclusion of more than one patentable invention in an application.

MPEP 803 (Guidelines). The examiner bears a serious burden in the requiring an election.

Restriction must be justified on the grounds that the application represents more than one invention based on the criteria of separate and distinctness. Only inventions that are demonstratably separate distinct are subject to the requirements of a restriction or election. MPEP 800. Ultimately the decision must be based on the claims of the proposed inventions.

The Examiner has found the technology expressed in the claims of Inventions I,II,III,IV, and V to draw on methods of mixing and forming, methods of making composites, methods of making films, methods of making composites of special forms, and/or methods of making fibers, all of which methods are classified in class 264, subclass (unknown). This suggests that all of the above cited inventions have share significant basic similarities thereby supporting the traverse. Inventions VI and VII are drawn to composites produced by the methods claimed in the application.

The applicant respectfully asserts and claims that the examiner has failed to satisfy the basic requirements of 803 MPEP.

Applicant's Assertion: Inventions I,II,III,IV, and V

The inventions identified by the Examiner are not separate and

independent inventions as defined in MPEP 800. Consider first Invention II proposed by the examiner, comprising independent claims 29,107, and 198. The Examiner reasonably concluded that these claims DO NOT represent separate or distinct inventions. An analysis of the independent claims comprising Invention II provides the full foundation for Applicant's traverse.

The substance of claim 29 is as follows: a method to produce a composite in which the composite comprises a major and a minor phase with the phases having certain characteristics and at least one phase being liquid during the mixing. The claimed method includes the steps of supplying both phases in a continuous fashion; chaotically mixing the components according to controlled mixing parameters to form a predetermined and controllable morphology. Continuously discharging the in-situ structured arrangement as a structured exudate of controllable morphological character, and controlling the chaotic mixing to control the development of the phases, and finally forming a structured exudate with preformed structures.

Claim 107 is a second, independent claim included in the Invention II as characterized by the Examiner. Similar to claim 29, claim 107 claims a method for the manufacture a composite; whereas, claim 29 claims a method to produce. A difference between the claims, but the Examiner correctly recognized that the difference did not separate the claims into separate inventions.

Similarly, claim 107 details of a minor phase including substantially discrete layers and holes of predetermined size. Such details are not suggested in claim 29, but again the differences do not define different inventions. Further in claim 107 the chaotic mixing is done according to a predetermined, controllable evolutionary process, not the developmental process of claim 29, but still inadequate difference to separate the two claims, 29 and 107 into separate inventions. Even specific termination of the process at controlled stage required in claim 107 does not separate that claim into an invention different from that of claim 29.

Finally, consider claim 198, the third independent claim comprising Invention II. Similar to claims 29 and 107, claim 198 claims a method for the manufacture of a multi-phase composite. In-situ development of structure claimed in claim 29 is not noted in claim 198; however, like claim 107, claim 198 specifies unique characteristics of one phase, a plurality of dispersed droplets. The supply in claim 198 is continuous; whereas the supply in claim 29 is a controlled. Although this is a difference, it does not constitute the basis of having claims 29 in one invention and claim 198 in a second invention.

Because the Examiner has correctly included claims 29,107, and 198 in Invention II; that is has effectively declared that the differences among these claims are insufficient to find that the

represent distinct or separate inventions, other methods claims considered by the Examiner that in fact differ no more from other independent claims should not be grouped into separate inventions.

Consider Invention I with independent claim 1. The major difference between claim 1 and the independent claims of Invention II is supplying material in a controlled manner in claim 1 where as Invention II recognizes both continuous and controlled supplying. No logic can be found to separate claim 1 into Invention I in the face of the independent claims 29,107, and 198 of Invention II.

Similarly, consider Invention III with independent claim 55. The major difference separating claim 55 from the claims of Invention I and Invention II is the characterization of a specific morphology to be selected. Since the characterization of specific features of one phase was not an adequate basis to separate claims in Invention II, the characterization of products in terms of a wide, potential array of features is no more adequate to justify separation of claim 55 as the basis of Invention III.

Continuing the same analysis, Invention IV comprises two independent claims 75 and 203. Consider the differences between claims 75 and 203 that the Examiner found inadequate to justify separation of these claims into separate inventions and the magnitude and nature of the differences in claim 75 compared with the claims of the other, methods inventions. Claim 75 is for a

method to produce a multiphase composite construction. In this, it is not markedly different from claims 1,29,55,107, and 198. similar to the claims of Invention II, it comprises a major and a minor phase with a plurality of continuous predefined, continuous layers. The basic chaotic mixing steps are generally familiar from all previously cited claims. The greatest distinction is described in the formation of layers that increase in number and decrease in thickness. This particular limitation is seemingly unique to claim 75; however, the details are not a basis for finding the claim to represent either a separate or different invention in that the formation of the layers and their morphology are clearly anticipated by other claims, such as claim 107 that describes a predetermined evolutionary process. The layering described in claim 75 is assumed as an evolutionary product; thus, in view of the recognition by the Examiner that evolution is a definable aspect of a claim, separation of claim 75 from other claims on the basis of a described evolutionary product is not justified. Claim 75 does not in fact represent a separate or different invention than what is anticipated by other claims in which evolution characterizes the chaotic process, and the Examiner has previously recognized that both development versus evolution does not constitute grounds for finding separate inventions. Claim 203, the second independent claim of Invention IV, describes clearly different films than are described for Claim 75. The films of Claim 75 have specific, controlled arrays of holes, platelets with extensive dimensions, and fibers (a structural not even suggested

by Claim 75), and various combinations. The specific differences described in Claim 75 versus Claim 203 are of an order of magnitude at least as significant as any differences distinguishing Claim 75 from other described claims. No unique justification can be found to separate Claim 75 and 203 to yield Invention IV.

On its face, Invention V as reflected by independent Claim 184 is based on its method to manufacture a fibrous construction. The very specific product (a fibrous construction) is different than that described for all other method claims. However, this difference does not constitute grounds to find the claim represents a separate and distinct invention. The claim remains, as all other methods claims, a claim directed to the manufacture (or production) of a construction having at least two phases and depending on chaotic processes to produce a variety of related constructions.

Applicant's Assertions: Inventions VI and VII

The Examiner places Claim 204 and claim 228 in class 428, subclass unknown. This suggests significant, basic similarities between the cited claims that support the traverse. In spite of the similarities associated with placement in the same class, the examiner has separated these independent claims and groups depending from each into Invention VI (claim 204) and Invention VII (claim 228).

Compare claims 204 and 228. Consider first Claim 204 that claims a multilayer structure with at least two phases, of which a portion of one minor phase is a relatively thin structure. Claim 228 claims also claims a multiphase composite described specifically as a multiphase, polymeric composite. The composites of claims 204 and 228 are clearly different, but they represent the same basic composition as evidenced by their inclusion in the same class (428). These compositions do not represent the required separate and distinct inventions required to justify election. Both are products of a chaotic process. Since the process is key to the argument, the assertion by the Examiner that the products could be formed manually is moot. Inadequate justification is given to separate the products of claims 204 and 228 on the basis that both are the unique products of the same fundamental, chaotic process.

Conclusion and Request

The preceding traverse demonstrates conclusively that the several independent claims drawn to methods represent variations of the basic chaotic process and not separate or distinct inventions. Groupings recognized by the Examiner such as those in Invention II fully support this assertion. The products claimed in claims 204 and 228 are products of a common process and separation is not justified. Therefore, the Applicant respectfully requests that the Examiner withdraw the required election.

If the Examiner declines to withdraw the requirement, Applicant elects the claims of Invention II (claims 29 - 54, 107 - 183, and 198 - 202). Further, Applicant respectfully requests that all other claims (1 - 28, 55 - 74, 75 -106, 203, 184 - 197, 204 - 227, and 228 - 231 be withdrawn from further consideration.

The Applicant gratefully acknowledges the Examiner's detailed and thorough analysis of the invention.

Respectfully,

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